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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,308

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EXAMINER

CHEVALIER, ROBERT

ART UNIT

PAPER NUMBER

2621

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,308	<b>Applicant(s)</b> COMER ET AL.	
	<b>Examiner</b> ROBERT CHEVALIER	<b>Art Unit</b> 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/14/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4-7, 9-12, 15-17, and 19-21, are rejected under 35 U.S.C. 102(e) as being anticipated by McMahon (P.N. 7,020,195).

McMahon discloses a video recording apparatus that shows all the limitations recited in claims 1, and 12, including the feature of using a first stream identification, encoding a base layer comprising base data representing a first version of a digital recording (See McMahon's Figure 5, and column 7, lines 44-51, and claim 17), and the feature of the second stream identification, encoding an enhancement layer which can be combined with the base data to represent a second version of the digital recording as specified in the present claims 1, and 12. (See McMahon's Figure 5, and column 7, lines 44-51, and claim 17).

With regard to claims 4-5, and 15-16, the feature of multiplexing the base layer and the enhancement layer as specified thereof is present in McMahon. (See McMahon's claim 12).

With regard to claims 6, and 21, the feature of storing the base layer and the enhancement layer on different physical layers of a storage medium as specified thereof is present in McMahon. (See McMahon's claim 18).

With regard to claims 7, and 17, the feature of encoding the base layer comprises coding the based data in a format substantially similar to MPEG-2 as specified thereof is present in McMahon. (See McMahon's column 6, lines 5-6).

With regard to claims 9, and 19, the feature of the second version of the digital recording comprising high definition program content as specified thereof is present in McMahon. (See McMahon's claim 20).

With regard to claims 10, and 20, the feature of storing the base layer and the enhancement layer on the storage medium as specified thereof is present in McMahon. (See McMahon's claim 17).

With regard to claim 11, the feature of the storage medium being a DVD as specified thereof is present in McMahon. (See McMahon's column 7, lines 66-67).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 2-3, and 13-14, are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon in view of Kikuchi et al (P.N. 2003/0147629).

McMahon discloses a video recording apparatus that shows substantially the same limitations recited in claims 2-3, and 13-14, including the feature of the stream identification recited in the present claims 2-3, and 13-14. (See McMahon's column 7, lines 44-51).

McMahon fails to specifically disclose the feature of the stream identification as 0XE0 as specified in the present claims 2-3, and 13-14.

Kikuchi et al discloses a video recording apparatus which includes the capability of identify streams of information using 0XE0 as specified in the present claims 2-3, and 13-14. (See Kikuchi et al's page 10, paragraph [0234]).

It would have been obvious to one skilled in the art to modify the McMahon's apparatus wherein the identification provided to the stream of data provided thereof would be identification as 0XE0 for the purpose of identifying the stream of data in the same conventional as is shown by Kikuchi et al. The motivation is to accurately identify the stream of data as suggested by Kikuchi et al.

6. Claims 8, and 18, are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon in view of Sun (P.N. 2006/0126962).

McMahon discloses a video recording apparatus that shows substantially the same limitations recited in claims 8, and 18, including the feature of encoding enhancement data before recording the same on the recording medium as specified in the present claims 8, and 18. (See McMahon's Figure 5).

McMahon fails to specifically disclose the feature of encoding the enhancement layer in a format substantially similar to at least one format selected from the group consisting of H.264. as specified in the present claims 8, and 18.

Sun shows a video encoding apparatus which includes the capability of compressing inputted video data using video compression standards such as H.264. as specified in the present claims 8, and 18. (See Sun's page 1, paragraph [0005]).

It would have been obvious to one skilled in the art to modify the McMahon's apparatus wherein the compressing means provided thereof (See McMahon's Figure 5, component 156) would incorporate the capability of compressing inputted video data using video compression standards such as H.264. in the same conventional manner as is shown by Sun. The motivation is to increase the quality of the compressed video data as suggested by Sun.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT CHEVALIER whose telephone number is

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(571)272-7374. The examiner can normally be reached on MM-F (9:00-6:30), second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ROBERT CHEVALIER/  
Primary Examiner, Art Unit 2621  
May 13, 2008.